* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 26th November, 2018*

\+ W.P.(C) 11220/2018

SHRI SATYANARAYANA RAO ..... Petitioner

Through: Ms. Kiran Suri, Sr. Adv. with Mr. Ravi Bhushan, Adv.

versus

INDIAN RENEWABLE ENERGY DEVELOPMENT AUTHORITY LTD. AND ORS. ..... Respondents

Through: Mr. Rajeev Mehra, Sr. Adv. with Mr. Munindra Dwivedi, Ms. Tanya Chanda and Ms. Aathira Pillai, Advs. for R1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. Present petition has been filed by the petitioner with the following prayers:

> *"In view of the foregoing premise, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-*
>
> *A) issue appropriate writ or order or direction calling for the records of the Appeal Nos. 190 of 2017 and 259 of 2018 both titled as "Shri Satyanarayana Rao v. Indian Renewable Energy Development Authority Ltd. and Ors." filed before Debt Recovery Appellate Tribunal, New Delhi and restore Appeal No. 259 of 2018 by quashing the*

impugned orders dated 13.08.2018 and 17.09.2018;

AND

B) direct the learned Appellate Tribunal to adjudicate upon Appeal No,. 190 of 2017 titled as "Shri Satyanarayana Rao v. Indian Renewable Energy Development Authority Ltd. and Ors." on merits and in terms of its order dated 07.11.2017;

AND

C) further direct the Recovery Officer, Debt Recovery Tribunal 1, to say the recovery proceeding emanating from order dated 04.04.2018 till the time appeal No. 190 of 2017 is finally adjudicated by the Debt Recovery Appellate Tribunal;

And / or

D) pass such other orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents."

2. The facts as noted from the petition are that the respondent no.1 sanctioned loan of Rs.1,150 Lacs to respondent no.2 for setting up of Biomass Power Project at Warangal, Andhra Pradesh. It is the case of the petitioner that the official of respondent no.1 in connivance with his relatives and friends opened a bank account in name of the respondent no.2 and dishonestly misappropriated the funds meant for the respondent no.2. Respondent no.1 filed an OA for recovery of the dues. In the OA, petitioner filed an IA being 1427/2016 seeking permission to cross-examine respondent

no.1's witnesses, who filed respective evidence by way of affidavits. The Tribunal dismissed the aforesaid application on 25th March, 2017. The petitioner assailed the order dated 25th March, 2017 before the DRAT Delhi (first appeal). On 7th November, 2017 DRAT allowed the petitioner and the respondent no.1 to file their written arguments. The Tribunal vide order dated 4th April, 2018 allowed the OA in favour of the respondent no.1 and held that the respondent no.1 is entitled to recover from the petitioner and respondent nos. 2 to 6 jointly and severally a sum of Rs.9,95,00,763/- along with interest. Aggrieved by the said order, petitioner filed an appeal being no. 259/2018 before the DRAT (second appeal).

3. It is the case of the petitioner that DRAT instead of hearing the first appeal had taken up the second appeal against the judgment of the OA and insisted upon the petitioner making the pre-deposit and on the appellant not making the pre-deposit, the Tribunal dismissed the second appeal challenging the order in the OA.

4. In substance the challenge of the petitioner is to the orders passed by the DRAT calling upon the petitioner to make pre-deposit of 50% of the amount which has already been found to be

recoverable from the appellant by the DRT and on failure to deposit the same, the appeal being 259/2018 has been dismissed.

5. Learned Sr. Counsel appearing for the petitioner would submit that the DRAT could not have insisted upon 50% of pre-deposit when fraud has been perpetuated by the financial institution and its officials and direction of pre-deposit shall result in irreparable legal injury to the petitioner. In fact, it is her submission that the Appellate Tribunal did not appreciate and consider the final order passed by the learned Tribunal, which was in the teeth of the order passed by the Appellate Tribunal dated 7th November, 2017, was a nullity and under such circumstances, the DRAT ought to have adjudicated the appeal on merit without insisting upon pre-deposit. She states, even otherwise, DRAT has erred in dismissing the second appeal of the petitioner when Misc. Appeal involving question of permission to cross-examine respondent no.1's witnesses was pending.

6. We are not impressed by the submissions made by the learned Sr. Counsel appearing for the petitioner for the simple reason that Section 21 of the DRAT Act which is reproduced as under contemplates making of pre-deposit on the debt determined.

> *"Section 21 - Deposit of amount of debt due, on filing appeal*
>
> *Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 1[fifty per cent], of the amount of debt so due from him as determined by the Tribunal under section 19:*
>
> *Provided that the Appellate Tribunal may, for reasons to be recorded in writing, [reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] to be deposited under this section."*

7. The OA having been decided against the petitioner and the debt having been determined against him and respondent nos. 2 to 6, even though jointly and severally, if he intends to challenge the order in appeal he should follow the mandate laid down in Section 21 of the Act of 1993. If such a plea of the learned Sr. Counsel for the petitioner is accepted, it would amount to re-writing the Section of the Act which is impermissible. The Supreme Court in the context of Section 18 of the SARFAESI Act, more particularly, second and third proviso, which also relates to pre-deposit has in the case of ***Narayan Chandra Ghosh Vs. UCO Bank IV 2011 (4) SCC 548*** held, the provisions are mandatory and the appeal cannot be

heard without directing the appellant therein to comply with the said mandatory requirement.

8. We do not see any merit in the petition. The petition is dismissed.

<u>CM. No. 43594/2018 (for Stay)</u>

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 26, 2018/*jg*